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ABSTRACT

Presenting his point of view on collective bargaining negotiations, the Chairman of the Board of Trustees of Jackson City College warns community college trustees to be prepared for faculty unionization. Governing boards should fight the enactment of mandatory bargaining laws, but should such laws be enacted, they should lobby for bills which include provisions for making strikes illegal, listing management rights, forbidding administrators to unionize, and denying compulsory arbitration. A tough negotiating team should be set up to allow the optimum freedom and power to the board. In-house personnel such as noninstructional administrators are preferable as negotiators to outside representatives, but no trustee or president should be a member of the team. During negotiations, economics should be discussed after all other demands are settled; as few provisions as possible should be allowed. Union recognition and management rights clauses, a "zipper" clause (disallowing previous benefits not specifically renegotiated), and a grievance procedure should always be included. Impasse situations should be expected and fought with public relations tactics. A model Master Agreement is appended. (MJK)

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BOARD vs FACULTY: COLLECTIVE BARGAINING - AN ADVERSARY PROCEEDING

By
George E. Potter

Since the mid 1960's collective bargaining with teachers has been sweeping like wildfire through the educational institutions of the country. In the beginning the American Federation of Teachers was the only real teachers union. However, the National Education Association and then the American Association of University Professors transformed from professional associations into unions.

The K-12 school districts have borne the brunt of teacher unionization. Private and public baccalaureate colleges and universities have generally escaped, so far, the trauma of collective bargaining with their teachers. Recent events indicate that the teacher unions are turning their attention to the public baccalaureate colleges and by the end of the decade most institutions will have organized faculties. While community colleges are behind K-12 school districts in teacher unionization they certainly have been far in advance of the baccalaureate institutions. Community college trustees who believe that the unionization of teachers is a phenomenon limited to metropolitan areas and certain states, such as Michigan, are in for a rude awakening. Discussions by the AFT and NEA regarding merger have not been motivated by a desire to save administrative costs. Their goal is clear: to unionize the teachers in every school district and college in America.

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Most educational boards have entered collective bargaining totally unprepared. Motivated by naive beliefs that "it can't happen in our institution" and their faculty union is going to engage in "professional negotiations", rather than collective bargaining, dozens of unprepared boards have been beaten at the bargaining table, destroyed in the news media and watched their institutions closed by striking teachers. None of these things need happen to a college board that carefully prepares for collective bargaining.

Laws Requiring Collective Bargaining

Presently only a few states require public employers to recognize employee unions and engage in collective bargaining. However, bills which would require collective bargaining with public employees have been introduced into the legislatures of almost every state where such laws do not currently exist.

If your state does not have a law requiring collective bargaining with teachers, you should pull out all stops to insure that such a law is not enacted or, if enacted, is not one-sided in favor of the unions. Lobbying against enactment of an unfavorable collective bargaining act is as important to the future of your institution as lobbying for state aid. From the management standpoint a good act contains the following:

1. A provision making strikes illegal.
2. Penalties for engaging in an illegal strike.
3. Provisions for boards to file unfair labor practice charges.
4. A list of those management rights not subject to collective bargaining.

5. Provisions forbidding administrators to organize into a union.

6. No provision for compulsory arbitration.

If your state law does not require collective bargaining your board should not formally recognize a faculty union nor enter into a collective bargaining agreement with your teachers. This does not preclude the teachers electing a committee to meet with representatives of the board to discuss working conditions. However, a board which recognizes a faculty union and then enters into a formal, written agreement with that union, when not required to do so by law, probably is acting contrary to the best interests of the college.

Be a Tough Adversary

Most collective bargaining acts give the employer the option of recognizing a union when it has cards signed by a majority of the members of the bargaining unit or requiring the holding of a secret ballot election. Even if a majority of teachers have signed cards indicating their desire to be represented by the union, insist upon an election. Many teachers will sign cards because of peer group pressure and not because of a desire to be unionized. While it is likely a majority will support the union in an election if a majority have signed the cards, it is possible that the union could lose the election. In any case, you have demonstrated that the board is not going to roll over and play dead but intends to be a tough adversary in the collective bargaining arena.

Some board members will argue that this will antagonize the

teachers and make them more difficult to deal with. The contrary is true. If they think the board is going to be easy to deal with their demands and tactics will be outrageous. If they feel that they are dealing with a strong, united board they're much more likely to be reasonable in their approach to collective bargaining.

As has already been inferred, it is extremely important for the board to get in the right mood for collective bargaining. This means to recognize unionization for what it is. You will not be entering into professional negotiations where the concern of all is the welfare of the college and the people it serves. At the bargaining table the sole concern of the teachers is their own interest. This is as it should be. Collective bargaining is an adversary procedure. Consequently the board must concern itself with the interest of the college and community in negotiations.

Establishing Negotiating and Backup Teams

Once the faculty is organized then the negotiation process begins. The board must establish its negotiating team. You must recognize that it is your team, not the administration's team. It is working for you and negotiates with the teachers on your behalf.

There are many viewpoints on the selection of a board negotiating team. There is common agreement among those experienced in negotiations that the team should not be too large. The most common number is three although some colleges use a single negotiator and others employ negotiating teams with as many as five members.

There are certain don'ts that every board should follow in creating a negotiating team. Don't put a trustee on the team. This brings too much power to the bargaining table. The faculty negotiators always have to go back to their membership for ratification. The board negotiators should have the same out, that is the ability to indicate that their agreements are subject to board approval. If a concession is made by a board member at the bargaining table it is almost impossible for the full board to later repudiate it. Some trustees have tried to sit in on negotiations without saying anything. Experienced teacher negotiators will work on a trustee with taunts such as "don't you as a board member have any thoughts on this point." Ultimately these result in unfortunate concessions by the trustee serving on the negotiating team.

Don't have your President serve on the negotiating team. After negotiations are completed the President must administer the contract. His ability to do so will be hampered if he participated on the negotiating team. Finally, don't include on the negotiating team first line administrators who are responsible for supervising the employees with whom they are negotiating. It is impossible to be a SOB at the bargaining table, which an effective negotiator has to be occasionally, and then deal with those employees later on a day to day supervisory basis.

As a general rule a board is better off with in-house negotiators than with a professional, such as an attorney. Train your own personnel to do the job. They will be more accepted by the

union negotiators and have a better understanding of your institution's operations. If you use a professional, always have one or more staff members on the negotiating team.

Generally the team should consist of non-instructional administrators. Your business manager, controller, dean of administration or dean of student personnel services are likely candidates. Larger institutions should consider employing a full time director of personnel who would head the negotiating team. Whomever serves on your team, chose the members carefully. An inept negotiating team can undo the most careful preparation.

In addition to the negotiating team the board should designate a backup team to advise and direct the negotiators. The President, instructional Vice-President or dean and some board members should be on the backup team. The Board should give the backup team complete authority to direct negotiations.

Preparing for Negotiations

The backup and negotiating teams must meet prior to beginning negotiations, probably on several occasions. The purpose of these meetings is to develop strategy for negotiations and the demands to be made at the bargaining table. In the event the negotiations are for the first contract then the Board's model contract should be developed for presentation to the union at the opening session. It is imperative that the board negotiators have demands for presentation

to the union rather than be on the defensive, reacting only to union demands.

When negotiations begin remember the rule "economics first and last but never in between." This is fundamental for board negotiators. Basically it means that they should insist that the union place all of its economic demands on the bargaining table at the beginning of negotiations. Then, these demands should not be discussed until all non-economic issues have been settled.

There is a very simple reason for this rule. In the event an impasse is reached the union will inevitably go to the public claiming the fault lies with the board and the teachers are only interested in better education for the students. The unions are extremely effective in conducting this type of publicity campaign and many trustees have been destroyed politically by them.

The strongest defense boards have to union publicity campaigns is to publicize the economic demands made by the union. Generally, opening economic demands by teachers' unions are outrageous. When an impasse occurs the board only needs to publicize these demands and let the public know what it would cost them in tax dollars to accede to these demands and the public support will be with the board. Do not underestimate the union or naively assume that it will not conduct such a campaign if impasse is reached. It is the teachers' most effective weapon since economic conditions have made strikes inadvisable.

Contract Provisions - Language Items

In negotiating a contract the board should always remember that the fewer number of provisions the better the contract from the board's standpoint. You start from the position where the board's authority to manage the institution is unfettered except by constitution or law. A contract represents restrictions on the right to manage. Resist the verbiage the union will demand be included in the contract. A sample "board" contract is in the Appendix.

Every union contract must contain a recognition clause. This clause recognizes the union as the exclusive bargaining agent for a certain group of employees which is designated as the bargaining unit. The recognition clause must be carefully drafted. It should spell out the employees who are members of the bargaining unit and exclude all other employees. Typically the union will propose a clause which excludes certain employees and includes all other employees in the bargaining unit. This should be avoided.

A board should insist upon a management rights clause being contained in the contract. This clause restates the authority of the board to manage the institution except as restricted by the terms of the contract. No contract should be signed by a board which does not contain a management rights clause.

A board should also insist upon inclusion of a zipper clause in the contract. This clause provides that the benefits contained in the contract constitute the sole benefits to which the teachers are entitled and all other benefits which they may have had in the past and which are not included in the contract are no longer available

to them. Many boards have signed a union contract without a zipper clause and subsequently learned that because they had provided a benefit to the faculty prior to the time it was organized by the union the teachers were still entitled to the benefit although the contract contained no provision for it.

A contract also should contain a grievance procedure. The procedure should be simple, clearly spelled out and contain specific time limits in which a grievance must be filed and processed from step to step. The board should insist upon the time limits being as short as possible. The board should insist that any grievance be filed in not more than ten days from the time the employee or union became aware, or should have become aware, of the event which gave rise to the alleged grievance. Thereafter, the employee should be allowed no more than ten days after receiving a decision on the grievance to move it to the next step of the grievance procedure.

There is considerable debate whether a grievance procedure should terminate with compulsory arbitration. Compulsory arbitration does infringe upon the board's right to render a final decision on all matters affecting the institution. This right is transferred to an arbitrator insofar as it relates to matters covered by the union contract. On the other hand, compulsory arbitration does provide for a final resolution of grievances which is generally accepted by all parties. In any case, the grievance procedure should be strictly limited to those matters arising out of the provisions or administration of the union contract. It should not allow the employee to grieve any other matter.

There are some very basic don'ts that every board should follow in negotiating a union contract.

1. Don't allow philosophical language to be included in the contract, e.g. "the members of the teaching professional are peculiarly qualified to assist in formulating policies and programs designed to improve educational standards."

2. Don't agree to the inclusion of a teachers' rights clause.

3. Don't restrict class size in the contract.

4. Don't give the regular teachers the right to elect to teach "overload" or extra courses.

5. Don't restrict the right of the board to hire supplemental or part-time teachers.

6. Don't restrict the right of the board to hire new teachers.

7. Don't grant paid leaves of absence except on a very limited basis.

8. Don't agree to sabbatical leaves unless you retain the absolute right to disapprove any requested leave.

9. Don't negotiate the college calendar. Agree only to number of weeks and classroom hours required of teachers.

10. Don't agree to any provision granting teachers the right to participate in management of the college.

11. Don't allow department chairmen to be elected by members of the department.

12. Don't agree on any provision in the contract until you have considered all of its potential ramifications. If in doubt keep it out.

Dealing with Impasse.

At some point every board engaged in collective bargaining with a group of employees faces an impasse in bargaining and the possibility of a strike. It is absolutely necessary that the board, whenever there apppears to be any chance of an impasse, prepare a strike plan. More boards have suffered tragic consequences because of a naive belief that their teachers would not engage in a strike. These boards awakened one morning to find the teachers on the picket line and the board totally unprepared for the crisis. A carefully prepared strike plan setting forth in detail the strategy to be followed in case of an impasse and resulting strike must be developed.

One of the most important aspects of any strike plan is that dealing with public relations. One tactic inevitably employed by the teachers union when an impasse has been reached is to attack the board in the news media and thereby weaken its bargaining position. The teachers unions are masters at this. Many boards have capitulated as a result of public pressure brought by the union. The theme in the union public relations campaign is always "better education." This, of course, is utter nonsense. No teachers union has ever struck for

better education. Teachers go on strike for more money, less work and better working conditions.

An alert board can effectively overcome the teachers publicity efforts by its own campaign in the news media. These public donnybrooks should be avoided. No board should ever start one but if one is started by the union every board should be prepared to react accordingly.

In its campaign the board should advise the public of the economic demands made by the teachers. These should be translated into terms the public understands. The public should be informed of the salary demands of the teachers, the current salary being paid the teachers, the number of hours spent in the classroom, and the number of weeks they work for this salary.

Chances are that a well prepared strike plan, particularly one that involves dismissing striking teachers and replacing them with other qualified teachers, will result in no strike at all. The faculty should be made aware of the strike plan. If they knew they would be risking their jobs it is doubtful they will strike.

Don't think for one moment it can't happen to you. On July 15, 1973, the Detroit Free Press reported "a secret battle plan of the statewide teachers' union calls for a co-ordinated series of 'tactical strikes' next fall to cripple school systems in large areas. . ." The Michigan Education Association (MEA), the union involved, admitted existence of the plan.

The plan was developed in response to school boards in Michigan joining forces to resist union demands. The plan tells MEA members

to "denounce boards for banding together in secret and unholy coalitions under the banner of the MASB" (Michigan Association of School Boards). However, the plan cautions "we must be ready to handle the obvious fact that the MEA locals have done it since 1965."

The plan, in referring to school boards, says "They have begun to organize, hire bargaining specialists and coordinate their efforts under the banner of the MSBA. They no longer fear the strike as a bargaining weapon. Boards are in the process of attempting to force the bargaining pendulum in management's direction after what they consider years of teacher bargaining advantages."

The strikes are to be proceeded by a $64,900 publicity campaign designed to "create a statewide atmosphere of grave urgency." If "after the appropriate crisis buildup" favorable settlements don't occur the MEA would co-ordinate "tactical regional strikes designed to disrupt the educational process and keep the boards in a state of confusion."

The plan advises MEA locals, in dealing with boards, to "attack their flanks as well as their strength." Among the strategies recommended by the plan are "guerilla warfare, violence, sabotage, etc." It can happen to you.

Summary

In summary, a board must prepare carefully for collective bargaining. The board must get itself in the proper frame of mind and recognize unionization for what it is. The board negotiating and backup teams must be chosen carefully. Strategy and demands must

be developed prior to beginning negotiations. Careful scrutiny of proposed contract provisions is vital and the contract should be kept as short as possible. In case of impasse a strike plan must be prepared. If you do your job properly you will win the collective bargaining war.

APPENDIX

MASTER AGREEMENT

This Agreement entered into this _____ day of _____, 1973, by and between the Board of Trustees of _____ Community College, hereinafter called the "Board", and the _____ Community College Faculty Association, hereinafter called the "Association".

ARTICLE I

RECOGNITION

The Board hereby recognizes the Association as the sole and exclusive bargaining representative for all full time teachers and for no other employees, professional or non-professional.

ARTICLE II

RIGHTS OF THE BOARD

Subject to the provisions of this Agreement and except as expressly provided otherwise by the terms of this Agreement, the Board of Trustees and the President reserve and retain full rights, authority and discretion, in the proper discharge of their duties and responsibilities, to control, supervise and manage the College and its professional staff, to determine and administer educational policy, to operate the College and to direct the professional staff, and otherwise retain all rights, authority and discretion which are exclusively vested in the Board of Trustees or the President under governing law, ordinances, rules and regulations as set forth in the Constitution and laws of the State of _____ and of the United States.

ARTICLE III

SALARY

Teachers shall receive salaries for the academic year as set forth in the salary schedule, designated Appendix A, attached hereto and made a part thereof.

ARTICLE IV

GRIEVANCES

A. A grievance is hereby defined to be any dispute or controversy between the parties to this Agreement, or between the Board of

Administration and any teacher covered by this Agreement, with respect to matters arising out of the provisions or administration of this Agreement. No other matters are subject to the grievance procedure.

B. To be valid a grievance must be filed at Step 1 or Step 2 within ten (10) days from the time the grievant became aware or should have been aware of the event which gave rise to the alleged grievance. Time periods may be extended by mutual agreement by the parties. When referred to days shall not include Saturdays, Sundays or holidays.

C. The number of days indicated at each step should be considered as maximum and every effort should be made to expedite the process. However, the time limits may be extended by mutual consent. Failure to answer a grievance at any step shall be considered a denial of the grievance.

D. At any step of the grievance procedure either party may have representatives present. This is in addition to the Association Representatives mentioned in the grievance steps.

E. At any step of the grievance procedure either party shall have the right to bring in witnesses to participate in the hearing.

F. Any teacher believing he has a basis for a grievance will first informally discuss the grievance with his Department Chairman. If after the discussion the teacher still believes a grievance exists he may invoke the formal grievance procedure.

G. In the event the Association files a grievance, it shall be processed directly at Step 2.

H. In the event the Board believes there has been a breach of the contractual agreement by the Association, then the President shall have the right to present the matter to the Association Grievance Committee in writing. A meeting shall then be held within ten (10) days.

I. Grievance Procedure.

Step 1. A grievance shall be presented in writing to the appropriate Dean or his designee, with a copy to the Association, who will meet with the grievant and Association representative. The meeting shall be held within six (6) days of the filing of the grievance in Step 1. Following the meeting a written answer shall be presented to the Association and the grievant within four (4) days. The grievant shall have six (6) days to appeal to Step 2, or the grievance will be considered withdrawn.

Step 2. A grievance appealed to Step 2 shall be discussed between the President or his designee and the grievant and

the Association Representative. The meeting shall be held within six (6) days of the presentation of the grievance. Following the meeting, the President or his designee shall answer the grievance in writing within four (4) days. A copy of the answer shall be given to the Association. The grievant shall have six (6) days within which to appeal to Step 3 or the grievance is considered withdrawn.

Step 3. A grievance appealed to Step 3 will be discussed in a meeting between the grievant, Association Representative and Board. This meeting will not be public. The meeting shall be held within twenty (20) days of the filing of the appeal in Step 3 and the Board shall have ten (10) days to answer in writing.

J. Nothing contained herein shall be construed to prevent any teacher from presenting a grievance and having the grievance adjusted without the intervention of the Association. However, no grievance shall be adjusted without prior notification to the Association and an opportunity for an Association Representative to be present, nor shall any adjustment of a grievance be inconsistent with the terms of this Agreement.

K. A grievance may be withdrawn at any level.

ARTICLE V

MISCELLANEOUS PROVISIONS

A. This Agreement shall supersede any rules, regulations or practices of the Board which shall be contrary to or inconsistent with its terms, and supersedes and cancels all previous Agreements, verbal or written or based on alleged past practices, between the college and Association, and shall constitute the entire agreement between the parties. Any amendment or Agreement supplemental hereto shall not be binding upon either party until such amendment or Agreement has been duly ratified by both parties.

B. If any provision of the Agreement or any application of the Agreement to any teacher or group of teachers shall be found contrary to law, then such provision or application shall not be deemed valid and subsisting, except to the extent permitted by law, but all other provisions and applications shall continue in full force and effect.

ARTICLE VI

RESERVE CLAUSE

All rights and authority of the Board prescribed by law or stated in Article II of this Agreement are retained. This Agreement

covers all subjects of bargaining and there shall be no duty on either party to bargain collectively for the duration of this Agreement.

ARTICLE VII

DURATION OF AGREEMENT

This Agreement shall be effective as of _____; and shall continue in effect until _____. This Agreement shall not be extended orally, and it is expressly understood that it shall expire on the date indicated.

BOARD OF TRUSTEES

By: _____
Chairman

By: _____
Secretary

ASSOCIATION

By: _____
President

By: _____
Secretary

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